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MAR 8 1944
CHARLES ELMORE CROPLEY
CLERK

(15)

No. 770

In the Supreme Court of the United States

October Term, 1943.

FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

W. F. SEMPLE,
Tulsa, Oklahoma,
GEORGE H. JENNINGS,
Sapulpa, Oklahoma,
Counsel for Petitioner.

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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1943.

No. .....

FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

Your petitioner above named respectfully prays that a writ of *certiorari* issue to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered in the above cause on November 3, 1943, reversing the judgment of the United States District Court for the Northern District of Oklahoma, in an action to quiet title to lands situate in Delaware County, State of Oklahoma.

Opinions Below.

The District Court did not write an opinion. The opinion of the Circuit Court of Appeals (R. 39) is reported as *United States of America* v. *Fannie E. Williams,* 139 F. (2d) 83.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered November 3, 1943 (R. 44). A petition for rehearing was presented and filed within the time provided by Rule 24 of the rules promulgated by the Honorable Circuit Court of Appeals for the Tenth Circuit (R. 47). The petition for rehearing was overruled on December 13, 1943 (R. 53).

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Statement.

The involved land was purchased on July 16, 1919, for William Bushyhead, a full-blood Cherokee Indian, enrolled opposite Roll No. 17669, with funds held in trust by the United States of America for his benefit; which funds were derived from oil royalties from restricted lands allotted to the said William Bushyhead by virtue of his enrollment as a full-blood citizen of the Cherokee Nation or Tribe (R. 19-20).

The deed conveying such property to the said William Bushyhead was a special form of deed, commonly known as the Carney-Lacher form, which provided that said land was not subject to lease, deed, mortgage, power of attorney, contract of sale, or other instrument affecting said land prior to April 26, 1931, unless made with the consent of and approved by the Secretary of the Interior (R. 20).[1]

1. The habendum clause of the deed is as follows (R. 35):

"To have and to hold said described premises unto the said grantee his heirs and assigns forever, free and clear and discharged of all former grants charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature, subject to the conditions that no lease deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto executed during the lifetime of said grantee at any time prior to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification unless made with the consent of and approved by the Secretary of the Interior."

On March 21, 1934, William Bushyhead, joined by his wife, executed a warranty deed purporting to convey said lands to F. M. Hartley. Thereafter the interest, if any, acquired by Hartley passed by mesne conveyances to the petitioner herein (R. 20-21).

William Bushyhead died intestate on October 16, 1935, leaving his wife, Callie Bushyhead, and five sons surviving as his sole and only heirs, all of whom are full-blood Cherokee Indians (R. 20).

On December 17, 1941, the petitioner filed the present action in the District Court of Delaware County, State of Oklahoma, to obtain a judicial determination of the heirship of said William Bushyhead, deceased, and to quiet her title to such lands against the known and unknown heirs of said decedent (R. 5-11). Notice of the pendency of the action was given to the Superintendent of the Five Civilized Tribes, pursuant to the provisions of Section 3 of the Act of Congress of April 12, 1926, 44 Stat. 239, and, at the instance of the United States, the cause was removed to the District Court of the United States for the Northern District Court of Oklahoma (R. 19).

After removal the United States filed a complaint in intervention, alleging, in substance, that the restrictions imposed in such deed were extended for a period of twenty-five years from and after April 26, 1931, by the provisions of Section 1 of the Act of Congress of May 10, 1928, 45 Stat. 495 (R. 11-15).

The District Court held, in substance, that the provisions of the Act of Congress of May 10, 1928, did not impose any additional restrictions upon the involved land, and that from and after April 26, 1931, the said William Bushyhead, as the owner of such lands, was competent to sell the same, and to convey a fee simple title free of any restrictions. Findings of fact and conclusions of law (R.

28-33) and a decree quieting petitioner's title to said lands (R. 33) were accordingly entered. On November 3, 1943, the Circuit Court of Appeals reversed the judgment of the trial court (R. 44). Petition for rehearing was duly filed (R. 47). It was overruled on December 13, 1943 (R. 53).

Question Presented.

Whether the provisions of Section 1 of the Act of Congress of May 10, 1928, 45 Stat. 495, extended the restrictions against alienation imposed upon lands purchased by the Secretray of the Interior with restricted funds of an individual Indian, where by the terms of the deed of conveyance the Indian grantee is restrained from alienating said land prior to April 26, 1931.

Statute Involved.

Section 1 of the Act of May 10, 1928, 45 Stat. 495, provides:[2]

> "That the restrictions against the alienation, lease, mortgage, or other encumbrance of the lands allotted to members of the Five Civilized Tribes in Oklahoma, enrolled as one-half or more Indian blood, be, and they are hereby, extended for an additional period of twenty-five years commencing on April 26, 1931: *Provided*, That the Secretary of the Interior shall have the authority to remove the restrictions, upon the applications of the Indian owners of the land, and may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe."

Reasons for Granting the Writ.

1. The decision below conflicts with *Oklahoma Tax Commission* v. *United States*, 319 U. S. 598, 63 S. Ct. 1284, 87 L. ed. 1233.

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2. Kappler, Indian Affairs, Laws and Treaties, Vol. V, p. 44.

The decision below is predicated upon the holding, in effect, that the royalties derived from the sale of oil and gas from the restricted allotment of William Bushyhead were impressed with the same trust as the lands from which they were derived; and that since the involved land was acquired with funds derived from a restricted allotment, said land constitutes "lands allotted to members of the Five Civilized Tribes," as that phrase is used in Section 1 of the Act of May 10, 1928.

In the *Oklahoma Tax Commission* case this Court reviewed at length the legislative history of the Act of Congress of January 27, 1933, 47 Stat. 777,[3] and expressly held that the restrictions upon oil royalties derived from a restricted allotment were extended by the provisions of Section 1 of that Act.[4] This decision was completely overlooked by the Honorable Circuit Court of Appeals.

2. The decision below conflicts with *Board of County Commissioners of Creek County* v. *Seber*, 318 U. S. 705, 63

3. Kappler, Indian Affairs, Laws and Treaties, Vol. V, p. 298.

4. Section 1 of the Act of Congress of January 27, 1933, provides, in part:

"That all funds and other securities now held by or which may hereafter come under the supervision of the Secretary of the Interior, belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled, are hereby declared to be restricted and shall remain subject to the jurisdiction of said Secretary until April 26, 1956, * * *; Provided, That where the entire interest in any tract of restricted tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds, by or for restricted Indians, such lands shall remain restricted and tax-exempt during the life of and as long as held by such restricted Indians, but not longer than April 26, 1956, unless the restrictions are removed in meantime in the manner provided by law: * * *."

It is evident that the involved lands are neither "funds" or "other securities" as those terms are employed in the 1933 Act. It is likewise evident that the involved lands do not fall within the terms of the quoted proviso, for the reason that lands of this class were not tax-exempt prior to the adoption of the Act of Congress of June 20, 1936, 49 Stat. 1542. Shaw v. Oil Corp., 276 U. S. 575, 48 S. Ct. 333, 72 L. ed. 709; Seber v. Board of Commissioners, 318 U. S. 705, 63 S. Ct. 920, 87 L. ed. 807.

S. Ct. 920, 87 L. ed. 807,[5] in which case the court, in construing the Act of June 20, 1936, 49 Stat. 1542,[6] as amended by the Act of May 19, 1937, 50 Stat. 188,[7] providing a tax immunity for lands acquired with restricted funds of individual Indians, expressly held that the restrictions and tax-exemption upon such lands will not expire on April 26, 1956, the date upon which restrictions expire upon allotted lands under the provisions of Section 1 of the Act of May 10, 1928.

The effect of this decision is, in substance, that lands purchased with restricted funds are not "lands allotted to members of the Five Civilized Tribes,"[8] as was held by the Honorable Circuit Court of Appeals in the instant case.

3. The language of the involved statute is perspicuous. It is so clear and free of ambiguity that nothing is left for judicial construction. The term "allotted lands" has a definite and well understood meaning,[9] and it is evident that Congress employed this term in its usual and ordinary sense. The obvious, palpable meaning of the words of the statute may not be disregarded because of the dependent character of the Indian.[10]

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5. The restrictive clause in the deed involved in that case had no definite time limitation.

6. 25 U. S. C. A., Section 412.

7. 25 U. S. C. A., Section 412 (a).

8. In the opinion this Court said (87 L. ed. 811):

> "It has been suggested that the tax exemption granted by the 1937 Act is personal to the Indian whose restricted funds were used to purchase the land or else that it extends to the land in the hands of restricted Creek Indian grantees only until 1956, consonantly with the statutes governing the tax status of restricted allotted lands of the Creeks. The Act does not say, however, and there is not a word to suggest that upon transfer of the lands to Indian heirs or grantees, subject to restrictions, the exemption is either to terminate or else extend only until 1956. If Congress had intended either result, it could easily have expressed those purposes."

9. Stewart v. Keyes, 295 U. S. 403, 411, 55 S. Ct. 807, 79 L. ed. 1507.

10. United States v. Choctaw Nation, 179 U. S. 494, 21 S. Ct. 149, 164, 45 L. ed. 291.

A consideration of the legislative history of this Act lends support to our claimed construction.[11]

If, however, there be any doubt as to the proper interpretation to be given to this Act, all doubt is removed by a consideration of the provisions of the Act of June 20, 1936, 49 Stat. 1542, and the amendatory Act of May 19, 1937, 50 Stat. 188.[12]

These statutes should be considered in determining the intent of Congress in the passage of the statute here in question, if there be any doubt as to the legislative intent or the proper interpretation to be given to that Act.[13]

4. The decision below conflicts with *United States* v. *Watashe,* 21 Fed. Supp. 903, wherein the identical question here presented was decided by the United States District Court for the Northern District of Oklahoma on January 25, 1938. It was held that restrictions upon the class of land involved in this case were not extended by the Act in question. This judgment was affirmed by the Circuit Court of Appeals for the Tenth Circuit on March 13, 1939 (102 F. (2d) 428).

The decision of the District Court in the *Watashe* case

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11. S. Rep. No. 982, 70th Congress, 1st Sess. See also Hearings before Committee of Indian Affairs, H. Rep., 70th Congress, 1st Sess., on H. R. 12,000.

12. Each of these statutes provided a tax immunity for land purchased with restricted funds of individual Indians "until otherwise directed by Congress." It is evident that Congress did not consider such lands to be allotted lands, otherwise it would have made provision for such tax immunity to terminate on April 26, 1956, the date on which restrictions will expire on allotted lands under the terms of the involved statute. See Board of County Commissioners v. Seber, 318 U. S. 705, 63 S. Ct. 920, 87 L. ed. 807.

It is to be observed that Congress by Section 4 of the Act of May 10, 1928, makes provision for tax-exemption for allotted, inherited and devised restricted land of members of the Five Civilized Tribes. It did not include lands of the class involved herein. If it had, no necessity would have existed for the enactment of the 1936 and 1937 Acts. Section 4 of the Act of May 10, 1928, is set forth in full in the appendix of this petition.

13. Tiger v. Western Investment Co., 221 U. S. 286, 31 S. Ct. 578, 55 L. ed. 738; Bowling v. United States, 233 U. S. 528, 34 S. Ct. 659, 58 L. ed. 1080

has governed the transfers of real estate for more than five years. The decision below disturbs numerous titles in the eastern part of the State of Oklahoma.

The decision of the District Court in the *Watashe* case has become a rule of property. It should not be overturned even though such construction were open to doubt. *Truskett* v. *Closser,* 236 U. S. 223, 35 S. Ct. 385, 59 L. ed. 549.

Conclusion.

Wherefore, for each of the reasons above stated, petitioner respectfully submits that this petition for a writ of *certiorari* should be granted.

W. F. Semple,
Tulsa, Oklahoma,

George H. Jennings,
Sapulpa, Oklahoma,
Counsel for Petitioner.

APPENDIX.

Section 4 of the Act of Congress of May 10, 1928, 45 Stat. 495, reads as follows:

"SEC. 4. That on and after April 26, 1931, the allottee inherited, and devised restricted lands of each Indian of the Five Civilized Tribes in excess of one hundred and sixty acres shall be subject to taxation by the State of Oklahoma under and in accordance with the laws of that state, and in all respects as unrestricted and other lands: *Provided*, That the Indian owner of restricted land, if an adult and not legally incompetent, shall select from his restricted land a tract or tracts, not exceeding in the aggregate one hundred and sixty acres, to remain exempt from taxation and shall file with the Superintendent for the Five Civilized Tribes a certificate designating and describing the tract or tracts so selected: *And provided further*, That in cases where such Indian fails, within two years from date hereof, to file such certificate, and in cases where the Indian owner is a minor or otherwise legally incompetent, the selection shall be made and certificate prepared by the Superintendent for the Five Civilized Tribes; and such certificate, whether by the Indian or by the Superintendent for the Five Civilized Tribes, shall be subject to approval by the Secretary of the Interior and, when approved by the Secretary of the Interior, shall be recorded in the office of the Superintendent for the Five Civilized Tribes and in the county records of the county in which the land is situated; and said lands, designated and described in the approved certificates so recorded, shall remain exempt from taxation while the title remains in the Indian designated in such approved and recorded certificate, or in any full-blood Indian heir of devisee of the land: *Provided*, That the tax exemption shall not extend beyond the period of restrictions provided for in this Act: *And provided further*, That the tax-exempt land of any such Indian allottee, heir, or devisee shall not at any time exceed one hundred and sixty acres."

Office Supreme Court U. S.
MAR 26 1945
CHARLES ELMORE CROPLEY
CLERK

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 770

FANNIE E. WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR REHEARING

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ARGUMENT

Upon the basis of documents found among the records in the office of the Superintendent for the Five Civilized Tribes, which petitioner alleges "were not available to her, or her counsel, at the time of the preparation and filing of her petition in this cause," because "neither petitioner, nor her counsel, were able to inspect the public records in the office of the Superintendent * * *" (Pet. 5),[1] petitioner contends that

[1] Nothing prevented petitioner or her counsel, at any time during this litigation, from requesting permission to examine the files of the Five Tribes' Agency for the purpose of ascertaining the existence of the documents relied upon. Under

a rehearing should be granted because of a "settled administrative construction" which "was overlooked by the court below" (Pet. 1, 5).

The documents relied upon show that between 1931 and 1935 the Superintendent of the Five Civilized Tribes wrote a number of letters advising that the restrictions in the Carney-Lacher form of deed expired April 26, 1931 (Pet. 2, 7–9), and that immediately prior to and following April 26, 1931, the Superintendent and the Commissioner of Indian Affairs in a number of instances requested the Secretary of the Interior to approve transfers of land purchased on the Carney-Lacher form of deed, in order that the restrictions, which under the terms of the deeds would expire on April 26, 1931, might be continued, and the First Assistant Secretary approved the transfers (Pet. 2–5, 10–13).

It does not appear that the Department of the Interior ever formally took the position that the

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applicable legislation and regulations of the Department of the Interior providing for the inspection of departmental records, such permission would be withheld only if the material sought was deemed "confidential" or "prejudicial to the interests of the Government." Act of August 24, 1912, 37 Stat. 497, 43 Code of Federal Regulations, Pt. 2, secs. 2.1–2.6; Departmental Order No. 1610, dated September 16, 1941, a copy of which is attached; Departmental Order No. 1918, dated February 8, 1944, a copy of which appears at pp. 13–15 of the petition for rehearing. Neither petitioner nor her counsel has any reason to believe that they would have been denied opportunity to examine pertinent records of the Five Tribes Agency had they sought permission to do so earlier.

Act of May 10, 1928, 45 Stat. 495 did not extend restrictions on purchased lands. The First Assistant Secretary's approval of the transfers does not amount to an official ruling that the 1928 Act did not extend restrictions, because his approval may well have been based simply on the desirability of the transfers from the standpoint of the Indian grantors and grantees. It is apparent from the correspondence of the Superintendent of the Five Civilized Tribes, however, that during the period 1931–1935 the Superintendent was of the opinion that the 1928 Act did not extend restrictions on purchased land, but there is no evidence that the Department of the Interior knew of the Superintendent's letters or approved of the views expressed therein. In the case of *United States* v. *Watashe*, 21 F. Supp. 903 (N. D. Okla.), affirmed on other grounds, 102 F. 2d 428 (C. C. A. 10), which was begun in 1937, the Government took the position that the 1928 Act was intended to extend restrictions on purchased land. The Department of the Interior has since regarded the question as one to be finally settled by the courts. It would thus appear that there has never been any "settled administrative construction" of the statute.

Moreover, the matter is not, as petitioner believes, one which "was overlooked by the court below." The Government, urging that the problem was one of great administrative importance, advised the trial court that 850 Carney-Lacher

deeds had been executed. From this the trial court concluded that the decision ought to be in petitioner's favor, since an adverse decision would disturb "850 titles like that of plaintiff." At page 12 of its brief in the court below petitioner emphasized the view taken by the trial court, asserting:

> So, as the trial court properly concludes, these large investments should not be destroyed, unless there is plain compulsion therefor found in the express terms of the act; and there it does not exist. No policy of the department is shown indicating a construction existing since the passage of the Act of 1928, such as appellant now seeks to have established. Indeed, from the circumstances above stated, the interpretation of the Department, as exemplified by its Muskogee, Oklahoma, office of the Superintendent of the Five Civilized Tribes, must be assumed to have been to the contrary. Otherwise, in decency and justice, some official warning as to such titles would have certainly been brought to the notice of the examining attorneys and the general public.

In a supplemental memorandum, which is referred to but not reproduced in the record (p. 39), a copy of which is appended, *infra,* pp. 11–14, the Government advised the court below that of ~~the~~ 295 Carney-Lacher titles ~~118~~ 118 which had been examined, had been sold by the grantees without

approval. In keeping with petitioner's argument below, the petition for a writ of certiorari stated (p. 8), "The decision below disturbs numerous titles in the eastern part of the State of Oklahoma." Thus, while the documents petitioner relies upon were not before the lower courts, it appears that the court below had before it information which reflected the departmental attitude, particularly the attitude of the Superintendent for the Five Civilized Tribes, toward Carney-Lacher titles.

The decision below was based upon considerations, which, independently of the viewpoint of the Superintendent for the Five Civilized Tribes, required a holding that Congress intended by the 1928 Act to extend restrictions on purchased lands. Those considerations were the substantial equivalence of restrictions on allotted lands and restrictions on purchased lands; the absence of any substantial basis for distinguishing between the two types of land; the course of subsequent legislation which showed that Congress could not have intended to distinguish between the two; and the anomalous and inexplicable results which would follow from a decision distinguishing between the two. See pages 4–12 of the Government's brief opposing certiorari. Thus, the decision below rests upon a sound basis and is clearly correct.

CONCLUSION

It is therefore respectfully submitted that the petition for rehearing should be denied.

CHARLES FAHY,
Solicitor General.

NORMAN M. LITTELL,
Assistant Attorney General.

NORMAN MACDONALD,
Attorney.

MAY 1944.

APPENDIX

UNITED STATES,
DEPARTMENT OF THE INTERIOR,
Washington, September 16, 1941.

ORDER No. 1610.

INSTRUCTIONS GOVERNING THE APPEARANCE AND TESTIMONY OF EMPLOYEES AS WITNESSES

I. *Voluntary Appearance.*—Employees of the Department shall not appear voluntarily to testify in any judicial proceeding before any court or other agency or officer authorized to conduct such proceeding where (a) the giving of the evidence sought to be obtained from the employee would be prejudicial to the interests of the Government, or (b) the absence of the employee from duty would be detrimental to the service.

A determination as to whether or not the giving of the evidence sought would be prejudicial to the interests of the Government must be made on the facts in each instance. Such determination shall be made only with the written approval of the head or acting head of the bureau or office concerned, and where the subject of the evidence involves more than one bureau or office of the Department, the determination made by the head or acting head of the bureau or office shall be submitted by him for review by the Secretary.

A determination as to whether the absence of an employee from duty would be detrimental to

the service shall be made as in other cases of leave from duty.

II. *Appearance Pursuant to Process.*—An employee compelled by the process of a court, or other agency or officer having power to compel the attendance of witnesses and having jurisdiction of the employee, to attend a judicial proceeding as a witness shall immediately notify the head or acting head of the bureau or office concerned. Insofar as the nature of the evidence to be required of the employee may be ascertained, a determination as to whether or not the giving of such evidence would be prejudicial to the interests of the Government shall be made as provided in cases of voluntary appearance and shall be similarly subject to approval and review.

The production of records of the Department in response to a subpoena duces tecum or other equivalent process, and the giving of oral evidence as to the contents of such records, shall also be governed by this instruction.

III. *Impartiality.*—In any instance where the giving of evidence is permitted pursuant to these instructions or required by the court or officer in charge of the proceedings, the employee shall at all times observe the strictest impartiality with respect to the interests of parties to the controversy: Provided, that this instruction shall not affect any proper conduct of an employee in a proceeding to which he is a party.

IV. *Employees to be Held Responsible for Obtaining Permission from their Bureaus or Offices.*—Any employee who has been requested to attend voluntarily a judicial proceeding as a

witness in a case dealing with matters connected with the business or records of the Government, or any employee who has been compelled by process to attend such a judicial proceeding as a witness will be held responsible for employing every reasonable means of ascertaining the nature of the evidence to be required and of notifying the head or acting head of the bureau or office concerned in order that a written determination may be made in advance as provided by these instructions.

In any instance where it is impossible to obtain such a written determination in advance, the employee will ask the Court to postpone the taking of his testimony on the ground that the regulations of the Department do not permit him to testify on matters pertaining to the official work of his bureau or office without his obtaining in advance the consent of the head or acting head thereof and the employee shall inform the Court that he is taking immediate steps to communicate with his superiors in order to obtain instructions. The employee shall then communicate with the head or acting head of his bureau or office, by telegraph, and ask for a telegraphic determination. If the Court should decide that the employee must testify before a telegraphic reply can be received, the employee shall use his own judgment with respect to the giving of evidence, having due regard to what, in his best judgment, the interests of the Government require.

An employee who is requested to testify in such a judicial proceeding, either on a voluntary or on a process basis, on a subject with which

he is not thoroughly familiar, should so advise the person requesting his testimony and suggest that such person communicate with the head of the employee's bureau or office in order to ascertain the name of an employee who is qualified to testify.

V. *Claiming Privilege.*—In any instance where an employee attends as a witness and evidence is sought to be obtained which would be prejudicial to the interests of the Government, the employee himself must, at the outset of his examination and before answering any questions, claim a privilege on that ground and advise the court or other officer in charge that he must decline to testify. The employee shall have with him and offer to the Court or other officer a copy of these instructions and, in cases where a prior determination has been made, a written original of such determination.

In cases where a prior determination has been made to the effect that the evidence sought to be obtained is not prejudicial to the interests of the Government but in the course of the examination the employee is asked a question, or questions, which in his judgment is prejudicial to the Government's interests, the employee shall claim a privilege on that ground and advise the Court or other officer that under the regulations of his Department he must decline to testify, at least until he can obtain a written determination from the head of his bureau or office.

HAROLD L. ICKES,
Secretary of the Interior.

In the United States Circuit Court of Appeals
For the Tenth Circuit

No. 2716

UNITED STATES OF AMERICA, APPELLANT

v.

FANNIE E. WILLIAMS, APPELLEE

MEMORANDUM

Pursuant to the permission granted by the Court on oral argument, there are submitted herewith one certified and three uncertified copies of the trial brief filed by the Government in the district court below.

These copies of the trial brief are filed in support of the statement of the Government on oral argument that the trial court's Conclusion of Law No. III (Record 31–32) to the effect that there are "850 titles like that of plaintiff" is based on a mistaken reading of the trial brief. The last paragraph of the trial brief and Exhibits C and D of the trial brief make clear that there were executed in all 850 deeds on the Carney-Lacher form, not that there were executed 850 unapproved deeds by the grantees. The word "cases" used in Exhibits C and D does not refer to cases in litigation but refers to cases in the administrative files of the Five Tribes Agency.

In accordance with the request of the Court for a memorandum of the available data concerning the status of the titles, the following is submitted:

Of the 850 Carney-Lacher deeds the Five Tribes Agency has caused title to be examined in 295 cases. The results of the examination are tabulated as follows:

Sold with the approval of the Department of the Interior or of the County Court	67	
Sold for taxes	63	
Owned by grantees	33	
		163
Sold by grantees without approval	118	
Sold by heirs of grantee[1]	11	
Sold by resale tax deed	3	
		132
Total		295

In support of this tabulation there is submitted herewith a copy of a letter dated September 4, 1943, from A. M. Landman, Superintendent for the Five Civilized Tribes, to the Secretary of the Interior.

A copy of this memorandum and its exhibits has been furnished to the Clerk for transmittal to counsel for appellee.

Respectfully,

MARVIN J. SONOSKY,
Attorney for the United States,
Appellant.

I. L. M.—Tax. Div.
BFS–SS 9–4–43.
Re: Information regarding restricted land upon which restrictions presumably had expired.
CC—Marvin Sonosky, C/O Frederick Kirgis, 1715 1st Nat'l Bldg., Denver 2, Colorado.

[1] Of the eleven sold by the heirs, eight were full-blood, one 11/16th blood, and in two instances the quantum of Indian blood has not been determined.

SEPTEMBER 4, 1943.

THE HONORABLE THE SECRETARY
OF THE INTERIOR,
Washington, D. C.
(Attention: Mr. W. H. Flanery.)

DEAR SIR: Further reference is had to your wire of September 3, 1943, asking for additional information regarding purchased land upon which restrictions presumably had expired April 26, 1931.

There are 866 of these cases which have been partially checked.

Take-offs have been requested from District Agents, and 295 cases have been completely checked with the following results:

132 cases were turned to the Probate Division to bring suit to recover land; 67 have been sold by approval of the County Courts or the Department; 63 have been sold at resale for taxes assessed prior to 1937; 33 are still owned by grantees.

Of the 132 cases turned to the Probate Division 118 were sold by the grantees, 11 by heirs of grantees, and 3 by resale. The conveyances made by the heirs were as follows:

Of the 11 sold by the heirs, 8 were full-bloods; 1, $^{11}/_{16}$ths, sold in 1940; and in 2 cases quantum of Indian blood has not been determined.

The conveyances were made in years as follows:

65 sold in 1931, 19 sold in 1932, 10 sold in 1933, 3 sold in 1934, 6 sold in 1935, 9 sold in 1936, 5 sold in 1937, 2 sold in 1938, 4 sold in 1939, 2 sold in 1940, 3 sold in 1941, 2 sold in 1942, and 2 sold prior to 1931 without approval.

When the decision in the *West* v. *Wicked* case was attacked in other litigation, checking of these cases was stopped pending a further determination of the courts of this question.

Respectfully,

(S) A. M. LANDMAN,
Superintendent.

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No. 770

In the Supreme Court of the United States

October Term, 1943.

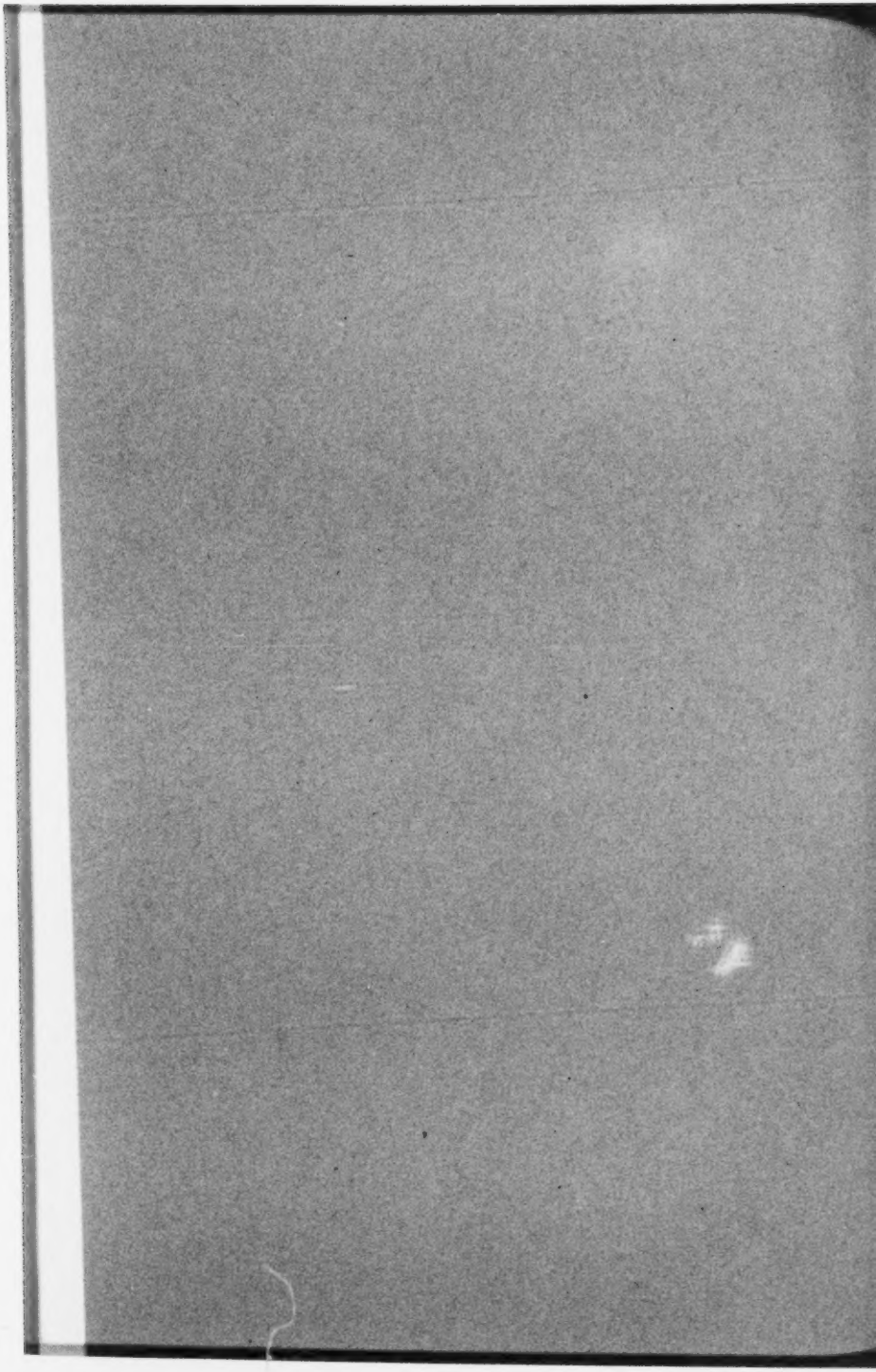
FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING.

W. F. SEMPLE,
Tulsa, Oklahoma,
GEORGE H. JENNINGS,
Sapulpa, Oklahoma,
Counsel for Petitioner.



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IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1943.

No. 770

FANNIE E. WILLIAMS, *Petitioner,*

vs.

UNITED STATES OF AMERICA.

PETITION *for* REHEARING.

Your petitioner respectfully prays the Court to grant a rehearing in this cause and to reconsider the petition herein for a writ of *certiorari* to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit entered in the above cause on November 3, 1943; and in support hereof, petitioner hereby adopts the grounds and reasons for the issuance of the writ set forth in her petition herein, and in addition thereto, respectfully shows to the Court:

That the decision below, construing the provisions of Section 1 of the Act of Congress of May 10, 1928, 45 Stat. 495, is in conflict with the settled administrative construction of the provisions of such enactment; and in this connection, petitioner respectfully shows to the Court that the officers charged with the administration of the property and affairs of the Five Civilized Tribes, in construing such enactment, have consistently held that such Act of Congress

did not operate to extend the restrictions upon the class of property which forms the basis of this action.(1)

In support of this statement we call attention to the fact that on September 22, 1931, the Superintendent of the Five Civilized Tribes addressed a letter to Daniel Stratton, an attorney at law, of Neosho, Missouri, advising him that the restrictions upon the land which is involved in this case expired at the close of April 26, 1931, and that Mr. Bushyhead could dispose of such property without the consent of the Secretary of the Interior.(2)

In addition, the records in the custody of the Superintendent of the Five Civilized Tribes at Muskogee, Oklahoma, disclose that immediately prior to and following April 26, 1931, in many cases, individual Indians, in whose behalf property had been purchased on Carney-Lacher forms of deed, were induced to convey such property to their children, or other near relatives, upon a form of deed restraining alienation or encumbrance, without limitation as to time. These conveyances were submitted to and approved by the Secretary of the Interior for the purpose of continuing restrictions upon the land.

Typical of these cases is a conveyance made by Punskee Field, a full-blood Creek Indian, who, on January 8,

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(1) This construction was consistently followed until the decision of the Circuit Court of Appeals for the Tenth Circuit in United States v. Watashe, 102 F. (2d) 428, decided May 13, 1939. The Department thereafter took the position that the court held in that case that the restrictions were extended by the Act of May 10, 1928.

(2) A certified copy of this letter is tendered to the Clerk herewith. It is also set forth in full as Appendix A, at page 7 hereof.

A casual search of 279 files in the Union Agency at Muskogee, Oklahoma, by counsel for petitioner, disclosed 16 additional letters to the same effect, in substance, written by the Superintendent of the Five Civilized Tribes. These letters are not set forth in full, but a list showing the date and the substance of such letters is set forth as Appendix B, at pages 7, 8 and 9 hereof.

1931, in consideration of one dollar and love and affection, conveyed lands, which had been purchased in his behalf on a Carney-Lacher form of deed, to his wife, Louisa Field, who was also a full-blood Creek Indian. This deed was transmitted to the Commissioner of Indian Affairs on January 10, 1931, by the Superintendent of the Five Civilized Tribes with recommendations that it be approved. The reason for the requested approval is set forth in the Superintendent's letter, as follows[3]:

> "This property was purchased for Punskee Field on Carney-Lacher form of deed in June, 1925. For authority for the purchase see your file L-P FCT 37428-25. The restricting clause in the deed conveying title to Punskee Field will not be effective after April 26, 1931.
>
> "We are fearful that after the property becomes unrestricted it might be disposed of to the disadvantage of Punskee Field."

On January 20, 1931, the Commissioner of Indian Affairs transmitted this deed to the Secretary of the Interior with recommendations that it be approved. In the letter of transmittal it is said[4]:

> "This property was purchased for Mr. Field upon a Carney-Lacher form of deed in 1925. The restrictive clause in the deed conveying the property to Mr. Field will not be effective after April 26, 1931."

The Commissioner's letter of transmittal discloses that the deed so executed by Punskee Field was approved January 22, 1931, by Jos. M. Dixon, First Assistant Secretary of the Interior.

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(3) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix C, at page 10 hereof.

(4) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix D, at page 11 hereof.

Also typical is a conveyance made by Wosey John Deere, a full-blood Creek Indian, who conveyed three tracts of land, which had been purchased in her behalf upon a Carney-Lacher form of deed, to her three children, upon a form of deed which restrained the children from alienating or encumbering the land, without limitation as to time, without consent of the Secretary of the Interior.(5)

The Superintendent of the Five Civilized Tribes transmitted this deed to the Commissioner of Indian Affairs on March 18, 1931, with recommendations that it be approved. In the letter of transmittal it is said:(6)

> "The above property was purchased for Wosey John, now Deere, through this office on the Carney-Lacher form of deed, and the restrictive clause expires at the close of April 26, 1931."

The Commissioner of Indian Affairs transmitted this deed to the Secretary of the Interior on March 30, 1931, with recommendations that it be approved. In his letter of transmittal it is said:(7)

> "The property involved was purchased for Wosey John Deere through our Agency at Muskogee, Oklahoma, and conveyance was taken to her upon Carney-Lacher form of deed. The restrictive period expires April 26, 1931."

The Commissioner's letter transmitting this deed to the Secretary of the Interior shows that it was approved on

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(5) These lands were involved in Board of County Commissioners of Creek County v. Seber, 318 U. S. 705, 63 S. Ct. 920, 87 L. ed. 807. They were also involved in Oklahoma Tax Commission v. United States, 319 U. S. 598, 63 S. Ct. 1284, 87 L. ed. 1233.

(6) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix E, at page 11 hereof.

(7) A certified copy of this letter is tendered to the Clerk herewith. It is set forth in full in Appendix F, at page 12 hereof.

April 3, 1931, by Jos. M. Dixon, First Assistant Secretary of the Interior.

The administrative interpretation of the involved statute, which is shown by the records in the office of the Superintendent of the Five Civilized Tribes, is entitled to great weight, and should not be overturned unless clearly wrong, or a different construction is plainly required. *Blanset* v. *Carden*, 256 U. S. 319, 326, 41 S. Ct. 519, 65 L. ed. 950. This interpretation of the act was overlooked by the court below.

Petitioner respectfully says that these records were not available to her, or her counsel, at the time of the preparation and filing of her petition in this cause; and that neither petitioner, nor her counsel, were able to inspect the public records in the office of the Superintendent of the Five Civilized Tribes for the purpose of ascertaining the existence of documents which might show such a construction of the involved statute.

In this connection, petitioner says that under date of February 8, 1944, the Honorable Secretary of the Interior issued Order No. 1918 which, in effect, forbids the officers and employees in the Indian Service from giving any information or permitting the inspection of books, records, or files where the evidence which might be obtained therefrom is to be used in any judicial or administrative proceeding in which the Government is interested, where such evidence might be prejudicial to the interests of the Government.*(8)*

That after the entry of the judgment in this cause, denying the petition for a writ of *certiorari*, one of petitioner's counsel, who was in Washington, made a request of the Secretary of the Interior for permission to examine the public

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(8) Order No. 1918 is set forth in full in Appendix G, at pages 13 to 15 hereof.

records in the Indian Agency at Muskogee, Oklahoma, for the purpose of determining whether or not records or documents existed which might show an administrative construction of the involved statute; and that on May 6, 1944, pursuant to such request, a letter was written by the Secretary of the Interior to the Superintendent of the Five Civilized Tribes, authorizing petitioner's counsel to examine the public records in such office for such purpose;(9) that said letter was received by the Superintendent of the Five Civilized Tribes on May 8, 1944, and petitioner's counsel thereupon made an inspection of such records and located the documents which are here offered in support of this petition for rehearing.

Your petitioner, therefore, asserts that the decision below is in conflict with the administrative interpretation of the involved enactment, and is in conflict with the applicable decisions of this Honorable Court, as is shown by our petition herein.

Wherefore, petitioner most respectfully prays that a rehearing be granted in this cause and that her petition for a writ of *certiorari* be granted, and that the writ issue.

Respectfully submitted,

W. F. Semple,
Tulsa, Oklahoma,
George H. Jennings,
Sapulpa, Oklahoma,
Counsel for Petitioner.

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(9) This letter is set forth in full in Appendix H, at page 16 hereof.

Appendix A.

Muskogee, Oklahoma,
September 22, 1931.

Mr. Daniel Stratton,
Attorney at Law,
Neosho, Missouri.

Dear Sir: Replying to your letter of the 19th inst. with regard to lands purchased through this office under date of July 16, 1919, for William Bushyhead, Cherokee Roll No. 17669, you are advised that the restrictive clause in the deed expired at the close of April 26, 1931. Mr. Bushyhead can now dispose of the property without the consent of the Secretary of the Interior.

Respectfully,

Superintendent.

Appendix B.

File Number 275. On December 7, 1931, the Superintendent of the Five Civilized Tribes wrote a letter advising that the restrictions imposed on lands purchased in behalf of Richard W. Batt, Cherokee Roll number M3527, upon a Carney-Lacher form of deed, expired on April 26, 1931, and that such lands could be sold to satisfy a judgment rendered against the Indian.

File Number 282. On January 12, 1932, the Superintendent of the Five Civilized Tribes wrote Arthur Landbricht, Field Clerk, Ardmore, Oklahoma, that the restrictions on lands purchased on a Carney-Lacher form of deed for Irene Shoemaker, *nee* Arkansas, Mississippi Choctaw Roll number 1100, expired on April 26, 1931.

File Number 285. On September 18, 1933, the Superintendent of the Five Civilized Tribes wrote Mrs. Lula Rochester, Milburn, Oklahoma, that lands which were purchased in behalf of her daughter, Lula Brown Rochester, Chickasaw Roll Number 3213, upon a Carney-Lacher form of deed, became unrestricted on April 26, 1931.

[APPENDIX]

Under date of June 15, 1934, the Superintendent wrote the Commissioner of Indian Affairs, in response to an inquiry made by Tom D. McKeown, an Oklahoma Congressman, that the restrictions imposed upon the above lands by the restrictive clause in the deed expired April 26, 1931.

File Number 289. On July 27, 1934, the Superintendent of the Five Civilized Tribes wrote Katie Dorsey Phillips, that the restrictions on property purchased in behalf of her deceased husband, Thomas Phillips, expired at the close of April 26, 1931.

File Number 310. On May 22, 1933, the Superintendent of the Five Civilized Tribes wrote Ross Daniel, United States Field Clerk, Tahlequah, Oklahoma, that the restrictions upon lands purchased on a Carney-Lacher form of deed, in behalf of Charley Bushyhead, Cherokee Roll Number 28516, expired on April 26, 1931.

File Number 332. On April 23, 1932, the Superintendent of the Five Civilized Tribes wrote Runabout Wilson, Cherokee Roll Number 17969, that the restrictions upon lands purchased in his behalf had expired on April 26, 1931, that the department would not continue to pay taxes since the lands were unrestricted.

File Number 343. On April 8, 1932, the Superintendent of the Five Civilized Tribes wrote Annie Cochran, *nee* Carey, Cherokee Roll Number 22028, that the restrictions on property purchased in her behalf had expired on April 26, 1931, and that the department would not continue its practice of paying taxes since the land was unrestricted.

File Number 349. On May 15, 1931, the Superintendent of the Five Civilized Tribes wrote Ollie Anderson, *nee* Beaver, Cherokee Roll Number 31170 that the restrictions on land purchased in her behalf had expired on April 26, 1931, and that she could make such disposition of the land as "you may see fit."

File Number 359. On March 31, 1933, A. G. McMillan, Assistant Superintendent of the Five Civilized Tribes wrote

H. C. Thompson, 304 South Elwood, Tulsa, Oklahoma, that property purchased for Lizzie Messer, *nee* Palone, Cherokee Roll Number 27052, became unrestricted on April 26, 1931. In this letter it is stated: "A deed dated subsequent to April 26, 1931, would be valid in any court."

File Number 405. On July 1, 1935, the Superintendent of the Five Civilized Tribes wrote Carl J. O'Hornett, 740 Kennedy Building, Tulsa, Oklahoma, that lands purchased in behalf of Lessy Yarhola, now Hawkins, became unrestricted on April 26, 1931.

File Number 435. On May 8, 1935, the Superintendent of the Five Civilized Tribes wrote Eli Ketcher, Indian Assistant, Stillwell, Oklahoma, that restrictions on property purchased in behalf of John L. Liver, Cherokee Roll Number 32995, automatically expired on April 26, 1931.

File Number 438. On August 25, 1932, the Superintendent of the Five Civilized Tribes wrote Ross Daniel that lands which were purchased on a Carney Lacher form of deed for Charles Campbell, Cherokee Roll number 3650, became unrestricted on April 26, 1931.

File Number 450. On May 5, 1932, the Superintendent of the Five Civilized Tribes wrote Annie E. Secondine, now Jordon, that the restrictions on property purchased in her behalf were automatically removed on April 26, 1931.

File Number 1088. On November 21, 1935, the Superintendent of the Five Civilized Tribes wrote Mary Mankiller Hughes that the restrictions on property purchased in her behalf expired on April 26, 1931.

File Number 1266. On April 26, 1932, the Superintendent of the Five Civilized Tribes wrote Minnie Tiger, now Bond, that lands which had been purchased in her behalf became unrestricted on April 26, 1931, and that the department would no longer pay the taxes upon the lands.

Appendix C.

Superintendent 1-10-31. Case No. 1352.

Muskogee, Oklahoma, January 10, 1931.

The Honorable,
Commissioner of Indian Affairs.

My dear Mr. Commissioner: I am enclosing herewith, for approval of the Secretary of the Interior, special form warranty deed, dated January 8, 1931, whereby Punskee Field, Creek 4564, of Henryetta, Oklahoma, coveys to his wife, Louisa Field, *nee* Watson, Creek Roll No. 5084, for consideration of $1.00 love and affection, lots 11 and 12, block 43, original townsite of Henryetta, Oklahoma. Located on these lots is a three story brick building occupied by a Hardware Company.

This property was purchased for Punskee Field on Carney-Lacher form of deed in June, 1925. For authority for the purchase see your file L-P FCT 37428-25. The restricting clause in the deed conveying title to Punskee Field will not be effective after April 26, 1931.

We are fearful that after the property becomes unrestricted it might be disposed of to the disadvantage of Punskee Field.

Punskee Field is interested in a Drug Store and an Auto Sales Agency and we believe it would be for his best interest to transfer title of above mentioned property to his wife. Punskee and his wife called at the office on the 8th inst. at which time he expressed a willingness to deed the property to Mrs. Field.

Punskee Field has a cash balance in the office of $270,634.54. He has asked that $100,000.00 of his money be invested in Government Bonds for his two minor children. This will be made the subject of a separate communication.

It is respectfully recommended that the deed herewith be approved.

Respectfully,

Superintendent

Appendix D.

LP-FCT 2179-31 659824-2 G'N. Received Jan. 24, 1931.

Jan. 20, 1931.

The Honorable,
The Secretary of the Interior.

My Dear Mr. Secretary: We are transmitting herewith warranty deed (special form) dated January 8, 1931, wherein Punskee Field, Creek Roll No. 4564, conveys to his wife, Louisa Field, *nee* Watson, Creek Roll No. 5084, for a consideration of $1.00, love and affection, certain property situated in the City of Henryetta, Oklahoma.

This property was purchased for Mr. Field upon a Carney-Lacher form of deed in 1925. The restrictive clause in the deed conveying the property to Mr. Field will not be effective after April 26, 1931.

Mr. Field is desirous of conveying this property to his wife and the Acting Superintendent recommends that the deed be approved. This Office concurs in that recommendation.

Sincerely yours,
C. J. Rhoads, Commissioner.

Deed approved by Jan. 22, 1931.
(Signed) Jos. M. Dixon, First Assistant Secretary and returned to Indian Office.

Inclosure No. 34344. 1 trw 17.

Appendix E.

Superintendent 3-18-31. Transmits deed of Wosey John now Deere in favor of her children, for approval. Inv. Cases Nos. 167-471-1584.

Muskogee, Oklahoma.
March 18, 1931.

The Honorable,
Commissioner of Indian Affairs.

My dear Mr. Commissioner:

There is enclosed deed executed by Wosey John, now

Deere, Creek Roll 9546, conveying to her children, Osharaha John, now Evalin Saber, Jimmie Powesheik and Juanita Deere, the following described property located in Creek County, Oklahoma:

The West Half of the Southwest Quarter of Section 27, Township 18 North, Range 11 East; the West Half of the Northwest Quarter of the Southwest Quarter of the Southwest Quarter and the West Half of the East Half of the Northwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 36, Township 18 North, Range 11 East; also the center fifty feet of Lot 6, and the center fifty feet of the South 33.4 feet of Lot 3, all in Block 39 of the original town of Sapulpa, Oklahoma. Consideration $1.00, love and affection.

The above property was purchased for Wosey John, now Deere, through this office on the Carney-Lacher form of deed, and the restrictive clause expires at the close of April 26, 1931.

It is respectfully recommended that the deed herewith be approved. You will note the grantor retains a life estate in all the real estate.

Respectfully,

Superintendent.

Appendix F.

Received Apr 6-1931. No. 1627

The Honorable
The Secretary of the Interior. Mar. 30, 1931.

My dear Mr. Secretary:

We are submitting herewith warranty deed upon special form dated March 4, 1931, executed by Wosey John Deere, a single person, Creek roll No. 9546, conveying to her children, Osharaha John, now Evalin Seber, Jimmie Powesheik and Juanita Deere, certain land situated in Creek County, Oklahoma. The grantor retains all the rents and profits to be derived from the property involved so long as she lives;

hat is, the grantor retains a life estate in all of the real estate described in the deed.

The property involved was purchased for Wosey John Deere through our Agency at Muskogee, Oklahoma, and conveyance was taken to her upon Carney-Lacher form of deed. The restrictive period expires April 26, 1931.

The Superintendent recommends that the deed herewith be approved, and this office concurs in that recommendation.

Sincerely yours,

C. J. Rhoads, Commissioner.

Apr. 3, 1931.

Deed approved by
(Sgd.) Jos. M. Dixon,
First Assistant Secretary, and
returned to the Indian Office.

Inclosure No. 34467.

Appendix G.

35455

United States
Department of the Interior
Washington

Order No. 1918. February 8, 1944.

Title 43—CODE OF FEDERAL REGULATIONS
Subtitle A

Part 3—Testimony of employees and Use of Books, Records and Files in Judicial and Administrative Proceedings.

Pursuant to Section 161 of the Revised Statutes (5 U. S. C., sec. 22), and the Act of August 24, 1912 (37 Stat. 497, ch. 370; 5 U. S. C., sec. 488, 489) the following regulations are hereby prescribed:

3.1. *Applicability.* The regulations in this part shall govern the testimony of employees and the use of books, records, and files of the Department in judicial and administrative proceedings.

3.2. *Employee's testimony subject to bureau head's permission.* Employees of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the Government, or furnish books, records or files of the Department or copies thereof for use in such a proceeding, voluntarily or in response to process, without the written advance permission of the head of the bureau or office concerned. Where time does not permit an employee to obtain written advance permission from the head of the bureau or office concerned and all possible effort to postpone the time fixed for the taking of his testimony has been made without success, the employee may appear, but shall claim a privilege, respectfully refuse to answer questions until the matter can be referred to the head of the bureau or office involved and, if permission to answer be withheld, to the Secretary or Acting Secretary, and exhibit a copy of these regulations in justification of such refusal. A departmental attorney may accompany the employee called upon to testify where permission has been denied or where permission has been granted and the bureau chief deems it desirable.

3.3. *Prejudicial character of evidence determined by Secretary.* Any employee, whose testimony is sought or from whom departmental books, records or files or copies of them are sought to be obtained for use in any proceeding, shall request the written advance permission of the head of the bureau or office concerned to appear and testify or furnish books, records or files or copies of them and as a part of each request shall disclose in so far as possible the nature of the evidence sought. If the head of the bureau or office concerned deems the disclosure of the evidence sought to be prejudicial to the interests of the Government, he shall refer the matter to the Secretary or Acting Secretary, who shall make a written determination that the disclosure of the evidence sought is or is not prejudicial to the interests of the Government and, consistent with such determination, the head of the bureau or office involved shall withhold or give his permission to the employee.

3.4. *Method of refusal to furnish records.* Any employee from whom departmental books, records or files, the disclosure of which has been determined to be prejudicial to the interests of the Government, are sought to be obtained shall respectfully refuse to furnish them or copies of them and exhibit a copy of these regulations and such determination in justification of such refusal.

3.5. *Method of claiming privilege.* Any employee appearing as a witness from whom evidence, the disclosure of which has been determined to be prejudicial to the interests of the Government, is sought to be obtained shall claim a privilege, respectfully refuse to answer and exhibit a copy of these regulations and such determination in justification of such refusal. In the event of unanticipated efforts to obtain evidence on which no prior determination has been had, the disclosure of which would, in the judgment of the employee involved or the departmental attorney accompanying him, be prejudicial to the interests of the Government, the employee shall claim a privilege, respectfully refuse to answer until the matter can be referred to the head of the bureau or office involved and, if permission to answer be withheld, to the Secretary or Acting Secretary, and exhibit a copy of these regulations in justification of such refusal.

3.6. *Revocation and amendments.* (a) Departmental Order No. 1610, dated September 16, 1941, is hereby revoked. (b) Section 2.1 of Part 2 of this subtitle is hereby amended by striking out "The" at the beginning of the section and substituting "Except as provided in Part 3 of this subtitle, the." (c) The present Part 3 of this subtitle, entitled "Preservation of American Antiquities," is hereby designated Part 4.

Issued and effective this 8th day of February, 1944.

Harold L. Ickes,
Secretary of the Interior.

Appendix H.

United States
Department of the Interior
Office of the Secretary
Washington

Air Mail

May 6, 1944.

Mr. A. M. Landman,
Supt., Five Tribes Agency,
Muskogee, Oklahoma.

My Dear Mr. Landman: This will refer to the case entitled Williams v. United States, No. 770, October Term 1943, Supreme Court of the United States.

The Supreme Court on April 24 denied certiorari in this case. 12 Law Week 3346. George H. Jennings, Esq., of Sapulpa, Oklahoma, attorney for the petitioner, was in this office several days ago and stated that he had in mind filing a petition for rehearing in the Supreme Court. He desires permission to examine any records of your agency which may show that restricted funds of individual Indians were used after April 26, 1931, in purchasing lands the title to which was held or claimed under a deed on the Carney-Lacher form citing that restrictions terminated on April 26, 1931.

This letter will authorize Mr. Jennings to examine the records of your Agency regarding this class of purchased lands. It is the intention of this Department to make your records available only for the purpose of obtaining information of the nature set forth above and to permit you to furnish at the usual charge copies of any part of your records relating to cases of this character.

Sincerely yours,

(Signed) Oscar L. Chapman,
Assistant Secretary.

Copy to Indian Office.
George H. Jennings.